IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/02/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.10949 of 2001

K.Balakrishnan .. Petitioner

-Vs-

1. The Managing Director
Metropolitan Transport
Corporation Limited
Pallavan House, Chennai-2.

2. The General Manager (Administration)
Metropolitan Transport
Corporation Limited
Chennai-2.

3. Mr.S.V.Raghavendran
General Manager (Administration)
Metropolitan Transport
Corporation Limited
Chennai-2.

4. Mr.S.Natarajan
Retired District Judge and
Enquiry Officer
Metropolitan Transport Workshop
K.K.Nagar, Chennai-78.

5. Mr.Arokiasamy
Manager
Metropolitan Transport Workshop
Chrompet, Chennai-44.

6. Mr.Kannan
Regional Manager
Metropolitan Transport
Corporation Limited
Ambattur Deport, Chennai-53. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorari as stated therein.

For Petitioner : Mr.V.Selvaraj

For Respondents : Mr.M.Vijayan
for respondents 1 and 2
No appearance
for respondents 3 to 5

:ORDER

1.1. Pursuant to the disciplinary action initiated against the petitioner alleging that he was responsible for the lighting strike of the conductors and drivers working in Alandur Depot on 11.12.1999, charges were framed, opportunity was given, enquiry was conducted, and finally charges were found established by the Enquiry Officer in his report dated 21.2.2000.

1.2. On the basis of findings recorded by the enquiry officer in his report dated 21.2.2000, a second show cause notice was also issued to the petitioner on 29.2.2000 proposing to dismiss the petitioner from service. After considering the submissions of the petitioner to the second show cause notice dated 29.2.2000 and overruling the same, the second respondent/disciplinary authority, endorsed the findings of the enquiry officer and an order of dismissal was passed on 3.3.2001 . Appeal preferred by the petitioner before the first respondent/ Appellate Authority also did not bring any relief. The first respondent/ Appellate authority by order dated 18.5.2001, confirmed the order of the second respondent/disciplinary authority dated 3.3.2001.

1.3. Aggrieved by the said order of the first respondent dated 18.5.2001 confirming the order of the second respondent dated 3.3.2001, the petitioner has preferred this writ petition for issue of a writ of Certiorari to call for the records relating to the order of the first respondent dated 18.5.2001 confirming the order of the second respondent dated 3.3.2001 and to quash the same.

2. Mr.V.Selvaraj, learned counsel for the petitioner, apart from challenging the findings of the enquiry officer in his report dated 21.2 .2000 that weighed the second respondent/disciplinary authority as well as the first respondent/appellate authority to pass the orders dated 3.3.2001 and 18.5.2001 respectively, also questions the punishment of dismissal imposed on the petitioner, on the ground that the same is shockingly disproportionate.

3.1. Admittedly, the petitioner was facing three charges with respect to the allegations levelled against him, viz.,
(i) he committed a misconduct attracting Clause 25(3) of the Standing Orders of the Respondent/Corporation, as he prevented the Drivers and Conductors from discharging their duties on 11.12.1999;
(ii) he committed a misconduct attracting Clause 25(3) of the Standing Orders of the Respondent/ Corporation, as he caused disturbance to the affairs of the respondent/ Corporation; and
(iii) he committed a misconduct attracting Clause 25(14) of the Standing

Orders of the Respondent/ Corporation due to his negligence and carelessness in finding a solution for the lighting strike resorted to by the Conductors and Drivers working in Alandur Depot on 11.12.1999 .

3.2. The enquiry officer, after appreciating the relevant materials, found all the charges established vide his report dated 21.2.2000, based on which both the second respondent/disciplinary authority, as well as the first respondent/appellate authority, by proceedings dated 3.3.2001 and 18.5.2001, ordered dismissal of service to the petitioner.

4.1. It is, of course, impermissible for this Court, while exercising the power of judicial review conferred under Article 226 of the Constitution of India to go into the findings of the enquiry officer with regard to the alleged misconduct, which weighed the respondents 1 and 2 to pass the impugned order of dismissal.

4.2. However, it is settled law that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance logic or moral standards. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. Therefore, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed, vide United Commercial Bank v. P.C. Kakkar,(2003) 4 SCC 364.

5. In the case at hand, the findings of the enquiry officer were not seriously canvassed. However, the quantum of punishment imposed by the respondents was challenged by the learned counsel for the petitioner as excessive.

6. Concededly, the petitioner had already retired on superannuation on 31.6.2003.

7. Taking into account the totality of the circumstances and assuming the charges framed against the petitioner were found established, it cannot be denied that the role of the petitioner as a traffic inspector during the time of lighting strike is very delicate as he has to discharge his duties as an arbitrator instead of acting in a rigid manner. During the process, he is expected to bring both the Conductors and Drivers to proper understanding as otherwise it is difficult to manage the situation. In such an attempt, assuming the petitioner was lacking some efficiency, it cannot be stated that, the petitioner himself contributed for the lighting strike; or he was a party to the lighting strike; or he was negligent and careless in winding up the lighting strike; or he was responsible for causing disturbance to the affairs of the respondent/ Corporation.

8. In that view of the matter, I find that the punishment of dismissal from service imposed on the petitioner for the aforesaid allegations is excessive and disproportionate to the charges framed, assuming they were found established. The second respondent/disciplinary authority as well as the first respondent/appellate authority, in my considered opinion, failed to take stock of the entire situation relating to the lighting strike of the Conductors and Drivers of Alandur Depot on 11.12.1999.

9. Having regard to all the circumstances of the case, and in particular taking note of the fact that the petitioner had already retired on superannuation on 31.6.2003, I am inclined to set aside the order of dismissal dated 3.3.2001 passed by the second respondent/ disciplinary authority as confirmed by the order of the first respondent/ appellate authority dated 18.5.2001, and modify the same as under:

(i) the petitioner shall be given the benefit of continuity of service till the date of retirement;

(ii) the petitioner shall be paid 50% of the wages from the date of suspension till the date of superannuation and the entire terminal benefits within four weeks from the date of receipt of copy of this order.

This writ petition is ordered accordingly. No costs.

Index : Yes
Internet : Yes

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